

Division of State Lands  
1600 State Street  
Salem, OR 97310

11- /  
FOR OFFICE USE ONLY  
Application # \_\_\_\_\_  
New \_\_\_\_\_ Renewal \_\_\_\_\_

APPLICATION FOR LEASE

SUBMERGED & SUBMERSIBLE LANDS  
(as defined in ORS 274.005)

Please Print

Applicant's Name Ash Grove Cement West, Inc. Address 13939 N. Rivergate Blvd.  
City Portland State Oregon Zip 97203 Phone 286-1677

Upland Owner(s)  
Name Ash Grove Cement West, Inc. Name \_\_\_\_\_  
Address 5550 S.W. Macadam Ave. Ste. 300 Address \_\_\_\_\_  
City Portland State Oregon City \_\_\_\_\_ State \_\_\_\_\_  
Zip 97201-3786 Phone 224-5747 Zip \_\_\_\_\_ Phone \_\_\_\_\_

Name of Waterway Willamette River Tributary of Columbia River

County Mult. Township 2-N Range 1-W Section 26&27 Tax Lot # 19 River Mile 2.9

Purposes of lease area (marina, log rafts, etc.) Private Dock

Lease Term Desired 20 Years

This application is made with full knowledge of the character of the land applied for, and we hereby waive and relinquish all right to and claim upon the State for the return of the consideration for use of said lands in case said lands or any part thereof do not belong to the State.

The act of any person entering into an agreement with the Division under ORS 274.040 or ORS 274.530 for the lease of submersible lands shall not be considered a waiver of such person of any claim of ownership in the submersible lands described in the agreement.

Signed \_\_\_\_\_  
(date)

Please attach the following: Title Plant Manager

1. A location map showing the general location of the lease area. Aerial photographs, USGS Quadrangle maps, Coast Survey Charts, and County Assessor maps are suitable for this purpose.
2. A complete and accurate legal description of the lease area tied to adjacent upland property lines and boundaries.
3. A plot plan (suggested scale 1"=100') showing the lease area, proposed or existing facilities, the adjacent uplands and riparian property boundaries, the location of the Ordinary High and Ordinary Low Water lines, and the direction of flow. A USCE project plan drawing is suitable for this purpose if distances are accurately shown.



## Division of State Lands

1600 STATE STREET, SALEM, OREGON 97310 PHONE (503) 378-3805

OREGON STATE  
LAND BOARD

NEIL GOLDSCHMIDT  
Governor

BARBARA ROBERTS  
Secretary of State

ANTHONY MEEKER  
State Treasurer

May 16, 1989

Mr. George M. Wells, President  
Ash Grove Cement West, Inc.  
5550 SW Macadam Avenue, Suite 300  
Portland, Oregon 97201-3786

Re: State Waterway Lease ML-743

Dear Mr. Wells:

Enclosed is a fully executed original State Waterway Lease ML-743 between the State of Oregon and Ash Grove Cement West, Inc. We have also retained an original in our files.

Thank you for your cooperation in this matter. The proceeds from this lease will go to support the Common School Fund of Oregon. Your prompt and professional treatment of this matter has helped to fund the educational future of this state. Thank you again.

Sincerely,

*Annie M. Gysin*  
for Bruce R. Mock  
Waterway Leasing Manager

BRM/amo  
Enclosure

STATE OF OREGON  
DIVISION OF STATE LANDS  
SUBMERGED AND SUBMERSIBLE LAND LEASE

ML-743

1. PARTIES

The parties to this Lease are the STATE OF OREGON, acting by and through the Division of State Lands, ("STATE") and Ash Grove Cement West, Inc., ("LESSEE").

2. LEASED PREMISES

STATE, for the consideration and upon the terms and conditions herein mentioned, does hereby lease to the LESSEE the following property:

All state-owned submerged land fronting Tax Lot 19, Section 26, Township 2 North, Range 1 West, Willamette Meridian, Multnomah County, Oregon, located within the following described parcel:

Commencing at a point on the South line of said Tax Lot 19, said point also being on the line of Ordinary High Water; thence riverward perpendicular to the thread of the stream of the line of Ordinary Low Water and the  
→ TRUE POINT OF BEGINNING;

thence continuing riverward along said perpendicular line 100 feet to a point; thence northerly parallel to said line of Ordinary Low Water 400 feet to a point; thence shoreward perpendicular to the thread of the stream 100 feet to a point on said line of Ordinary Low Water; thence southerly along said line of Ordinary Low Water 400 feet, more or less to the TRUE POINT OF BEGINNING, containing 0.92 acres more or less.

hereinafter referred to as the "Leased Premises."

3. PURPOSE

LESSEE shall have exclusive possession of the Leased Premises for the sole purpose of private dock and for no other purpose without prior written consent of STATE.

4. TERM OF LEASE

The LESSEE, subject to compliance with the terms and provisions of this Lease, shall have and hold the Leased Premises for the purposes stated above from April 1, 1989, through 12:00 p.m. March 31, 2009.

5. LEASE PAYMENT

The lease payment to be paid by LESSEE to STATE shall be \$442 per year subject to redetermination at any time after the first anniversary date of the Lease. Receipt of the first year's lease payment is hereby acknowledged. Lease payments shall be payable annually and shall be due on the 1st day of April in advance. Payments shall be sent to the Division of State Lands, 1600 State Street, Salem Oregon 97310-0230.

6. REDETERMINATION

Redeterminations shall be made in accordance with the lease rate provisions of the Oregon Administrative Rules applying to state-owned submerged and submersible lands which are in effect at the time of redetermination. In the event that STATE redetermines the annual lease payment in accordance with those rules and LESSEE does not agree to the redetermined annual lease payment, LESSEE may request a review by STATE of the redetermined lease payment amount. Such review request shall be made in writing within 14 days of delivery by STATE of written notice to LESSEE of the lease payment redetermination.

7. ACCESS TO PROPERTY AND RECORDS

STATE shall have access to the Leased Premises at all reasonable times for the purpose of assuring compliance with the terms and conditions of this Lease. STATE shall have the right to examine pertinent records of LESSEE for the purpose of assuring compliance with the Lease and for the purpose redetermining the lease payment rate.

8. RESERVATIONS

The interest of LESSEE under this Lease shall at all times be subject to STATE's right to grant rights-of-way in and over said property or a portion of the property for other purposes, including, but not limited to, railroads, telegraph and telephone lines, pipelines, irrigation or other water canals and ditches, and to STATE's right to lease all or part of the property for the exploration, discovery, development and production of oil, gas or minerals of any nature whatsoever, provided the right-of-way or lease does not unreasonably interfere with the purpose of this Lease.

9. RESTRICTIONS/REQUIREMENTS

N/A

#### 10. COMPLIANCE WITH LAW

LESSEE shall comply with all applicable federal, state, and local statutes, ordinances, rules and regulations in its use of the Leased Premises. This Lease does not give LESSEE permission to conduct any use on the Leased Premises which is not in conformance with applicable land use requirements, and it is the LESSEE's responsibility to determine and comply with all other requirements.

#### 11. TAXES, LIENS, ASSESSMENTS, CHARGES

LESSEE shall pay as they become due all taxes, assessments, penalties, fines, charges, rates or liens of any nature whatsoever that may be levied, assessed, charged, imposed or claimed on or against the Leased Premises or any improvements or fixtures thereon or appurtenances thereto. If LESSEE fails to pay any taxes, assessments, penalties, fines, charges, rates or liens, within ten (10) days after notice that such sums are due, STATE may pay such sums. Any such sums paid by STATE shall bear interest at the maximum legal rate pursuant to ORS 82.010 from the date of expenditure by STATE until paid.

#### 12. PREVENTION OF WASTE, DAMAGE AND INJURY

LESSEE shall exercise reasonable diligence in its operation on and from said Leased Premises; shall carry on all operations hereunder in a good and workmanlike manner having due regard for public safety and the prevention of waste and for the restoration and conservation of said Leased Premises for future use, and shall take all reasonable steps to avoid unnecessary damage to soil, timber, fish and fish habitat, wildlife and wildlife habitat and water quality of both ground water and surface water; shall make all reasonable efforts to minimize interference with existing navigational and recreational activities and scenic values; shall insofar as possible restore the Leased Premises to its former condition except as otherwise may be approved or ordered by STATE; and shall do all things reasonably necessary to minimize erosion.

#### 13. EXCLUSIVITY

The rights and privileges granted under this Lease are exclusive.

#### 14. PUBLIC SAFETY

The LESSEE may restrict entry to any portion of the Leased Premises as may be necessary to protect persons and property from harm arising from or in connection with the LESSEE's activities upon the Leased Premises.

#### 15. ASSIGNMENT OR SUBLEASE

The LESSEE shall not assign this Lease, or any interest therein, nor sublet or grant any right of use in said Leased Premises, or any portion thereof, without the prior written consent of STATE. Any assignment, or attempted assignment, subletting, or attempted subletting, or grant of right of use or attempted grant of right of use without such consent, shall be absolutely null and void and shall, at the option of STATE, terminate all rights of the LESSEE under or by virtue of this Lease.

STATE may, in its discretion, consent to an assignment or sublease provided the following conditions are satisfied:

- (a) A fee of \$50 is prepaid to cover administrative costs, and
- (b) LESSEE has satisfied all conditions of the Lease precedent to assignment or sublease, and
- (c) LESSEE and its assignee have completed a standard assignment form provided by STATE and assured the STATE that the assignee has the capability to perform on the Lease, and
- (d) STATE determines such assignment or sublease is in the best interest of the STATE.

#### 16. ALTERATIONS AND IMPROVEMENTS

LESSEE shall obtain the written consent of STATE prior to making any alterations to the property or improvements upon the property.

#### 17. DEFAULT

The following shall be events of default:

- a. Failure of LESSEE to pay any lease payment or any other charge within ten (10) days after the lease payment or other charge is due.
- b. Failure of LESSEE to comply with any term or condition or to fulfill any obligation of the Lease other than the payment of lease payments or other charges within twenty (20) days or other period specified in writing by STATE after written notice by STATE specifying the nature of the default with reasonable particularity.
- c. Insolvency of LESSEE; an assignment by LESSEE for the benefit of creditors; the filing by LESSEE of a voluntary petition in bankruptcy; an adjudication that LESSEE is bankrupt or the appointment of a receiver of the properties of LESSEE; the filing of any involuntary petition of bankruptcy and the failure of LESSEE to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of LESSEE to secure discharge of the attachment or release of the levy of execution within ten (10) days.

## 18. TERMINATION

In the event of a default, the lease may be terminated at the option of STATE by notice in writing to LESSEE. If the Lease is terminated by option of STATE or otherwise, STATE shall be entitled to recover damages from LESSEE for the default. If the Lease is terminated, LESSEE'S liability to STATE for damages shall survive such termination. LESSEE shall have thirty (30) days after date of termination to remove all fixtures and property which are not subject to STATE's option under paragraph 20 (a) below or for which STATE has chosen not to exercise said option, from the Leased Premises. Failure to remove the above items within the thirty (30) day period will be considered to be abandonment by the LESSEE and the STATE shall take title to the property after the expiration of thirty (30) days. STATE may reenter, take possession of the Leased Premises and remove any persons or property by legal action or by self help with the use of reasonable force and without liability for damages.

Following reentry, STATE may relet the Leased Premises and in that connection make any suitable alteration to the said premises or change the character or use of the said premises but STATE shall not be required to relet for any use or purpose (1) which is different from that specified in the Lease, or (2) which STATE may reasonably consider injurious to the premises, or (3) to any lessee which STATE may reasonably consider objectionable. STATE may relet all or part of the Leased Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions.

In the event of termination on default, STATE shall be entitled to recover immediately without waiting until the due date of any future rent or until the date fixed for expiration of the lease term, the following amounts as damages:

a. The loss of reasonable rental value from the date of default until a new lessee has been, or with the exercise of reasonable efforts could have been, secured.

b. The reasonable costs of reentry and reletting included without limitation the cost of any cleanup, refurbishing, removal of LESSEE's property and fixtures, or any other expense occasioned by LESSEE's failure to quit the Leased Premises upon termination and to leave them in the required condition, and any restoration cost, attorneys fees, court costs and advertising costs.

This lease may also be terminated by mutual written consent of LESSEE and STATE.

## 19. DELIVERY OF PREMISES: SURRENDER

In the event the lease is terminated, or upon expiration, LESSEE shall immediately vacate the premises and shall surrender the Leased Premises in substantially the original condition. STATE may require LESSEE to restore the Leased Premises to the original condition or STATE may itself restore the property and recover its restoration costs from LESSEE.

## 20. FIXTURES AND PERSONAL PROPERTY

(a) All fixtures placed upon the Leased Premises during the term shall, upon expiration or at termination by any method, at STATE's option, become the property of STATE. If STATE so elects, LESSEE shall remove any or all fixtures which would otherwise remain the property of the STATE and shall repair any physical damage resulting from the removal. If LESSEE fails to remove such fixtures, STATE may do so and charge the cost to LESSEE with interest at the maximum legal rate pursuant to ORS 82.010 from the date of expenditure by STATE.

(b) Within 30 days after receipt of written notice from STATE, LESSEE shall remove all personal property and/or fixtures which remain its property and are not subject to STATE's option under paragraph 20 (a) above, or for which STATE has chosen not to exercise said option. If LESSEE fails to do so, this shall constitute an abandonment of the property, and STATE may retain the property and all rights of LESSEE with respect to it shall cease.

## 21. HOLDOVER

If LESSEE does not vacate the Leased Premises at the time required, STATE shall have the option to treat LESSEE as a tenant from month to month, subject to all of the provisions of this Lease except the provisions for term. Failure of LESSEE to remove fixtures, equipment and/or other property which LESSEE is required to remove under this Lease shall constitute a failure to vacate to which this paragraph shall apply if the property not removed will substantially interfere with occupancy of the premises by another lessee or with occupancy by STATE for any purpose including preparation for a new lessee.

If a month to month tenancy results from a holdover by LESSEE under the above paragraph, the tenancy shall be terminable at the end of any monthly lease payment period on written notice from STATE given not less than ten (10) days prior to the termination date which shall be specified in the notice. LESSEE waives any notice which would otherwise be provided by law with respect to a month to month tenancy.

## 22. PRORATION OF RENT

In the event of termination of this Lease at a time other than the end of a specified lease payment period, the lease payment shall be prorated as of the date of termination and in the event of termination for reasons other than default, any excess advance annual lease payment shall be refunded to LESSEE or paid on its account.

## 23. STATE'S RIGHT TO CURE DEFAULTS

If LESSEE fails to perform any obligation under this Lease, STATE shall have the option to do so after thirty (30) days' written notice to LESSEE unless otherwise specified in this Lease. All of STATE's expenditures to correct the default shall be reimbursed by LESSEE on demand with interest at the maximum legal rate pursuant to ORS 82.010 from the date of expenditure by STATE until paid.



In the event any violation or breach of the provisions of this lease is causing damage to the Leased Premises or the LESSEE is utilizing the Leased Premises in a manner not permitted by the provisions of this Lease, or in any case damages are occurring to the Leased Premises, STATE may immediately enter upon the Leased Premises and take such action as necessary to cease such damages or use. LESSEE shall be liable to STATE for all costs reasonably incurred in correcting such violations.

#### 24. RIGHT TO SUE MORE THAN ONCE

STATE may sue periodically to recover damages for the period corresponding to the remainder of the lease term and no action for damages shall bar later action for damages subsequently accruing.

#### 25. REMEDIES CUMULATIVE

The remedies contained in this Lease shall be in addition to and shall not exclude any other remedy available to STATE under applicable law.

#### 26. INTEREST ON RENTS AND OTHER CHARGES

Any lease payments or other sum due from LESSEE under the terms of this Lease shall, if not paid within ten (10) days after it is due, bear interest at the maximum legal rate pursuant to ORS 82.010 from the due date until paid.

#### 27. BOND

LESSEE shall, prior to the issuance of this Lease, furnish to STATE a bond in the amount of \$ N/A which bond shall be conditioned upon the prompt and faithful performance of all terms of the Lease. The bond shall be issued by a surety acceptable to STATE.

#### 28. INSURANCE

The LESSEE agrees to maintain during the terms of this Lease, comprehensive or commercial general liability insurance covering personal injury and property damage, naming the STATE as additional-insured. This insurance shall include contractual liability coverage for the indemnification provided under this Lease. Coverage limits shall not be less than the limits of liability set forth in the provisions of ORS 30.270(1) as now in effect or as hereafter amended. The coverage limits shall not be less than \$500,000.00 combined single limit per occurrence. The insurance shall be in a form and with companies acceptable to STATE. Such insurance may be evidenced by certificates or by copies of policies. Such evidence shall be provided to STATE prior to the commencement of any operations or activity under this Lease.

## 29. INDEMNIFICATION

LESSEE agrees to indemnify, defend and hold STATE, its officers, employees, and its agents harmless from any and all damages, claims, actions, costs and expenses arising in whole or in part out of acts or omissions related to this Lease. STATE shall have no liability to LESSEE for any loss or damage caused by third parties or by any condition of the LEASED PREMISES.

## 30. ATTORNEY FEES

If suit or action is instituted in connection with any controversy arising out of or in connection with this Lease, the prevailing party shall be entitled to recover all costs and disbursements incurred, including such sum as the court may adjudge reasonable as attorney fees.

## 31. MODIFICATION

This agreement may be changed, altered or amended only by mutual written consent of the parties.

## 32. MERGER

This Lease constitutes the entire agreement between the parties, and no oral statement, representation or agreement not herein expressed shall be binding upon any party.

## 33. NON WAIVER

Failure of STATE to demand rigid adherence to any of the terms of this Lease on any occasion shall not be construed as a waiver of any of the terms of this Lease and such conduct shall not deprive STATE of the right thereafter to insist on strict compliance with any of the terms of this Lease.

## 34. PARTNERSHIP

STATE is not a partner nor a joint venturer with LESSEE in connection with the business carried on under this Lease and shall have no obligation with respect to LESSEE's debts or other liabilities.

## 35. NOTICES

Any notices required or permitted under this Lease shall be in writing and deemed given three (3) days after deposited, postage prepaid, in the United States mail as regular mail and directed to the address provided below or to such other address as may be specified from time to time by either of the parties in writing.

For STATE:

DIVISION OF STATE LANDS  
1600 State Street  
Salem, OR 97310

For LESSEE:

Ash Grove Cement West, Inc.

5550 S.W. Macadam Ave., Suite 300

Portland, OR 97201-3786

36. EXHIBITS

All exhibits hereto are expressly incorporated herein by reference and made a part hereof.

IN WITNESS WHEREOF the parties have executed this Lease.

STATE OF OREGON, DIVISION OF  
STATE LANDS

May 15, 1989  
Date

Janet C. Numan  
Assistant Director

April 28, 1989  
Date

George M. Wells  
LESSEE

PRESIDENT

Title

(Corporate)

STATE OF Oregon )  
County of Multnomah ) ss

The foregoing instrument was acknowledged before me this 28th  
day of April, 19 89, by George M. Wells  
(officer or agent of corporation), the President  
(title of officer or agent) of Ash Grove Cement West, Inc.  
corporation, a Nevada (state or place of  
incorporation) corporation, on behalf of the corporation.

Jack L. Sloan  
Signature

My Commissions Expires 8/23, 1990.

154  
Oregon



DIVISION OF  
STATE LANDS

STATE LAND BOARD

JOHN A. KITZHABER  
Governor

PHIL KEISLING  
Secretary of State

JIM HILL  
State Treasurer

775 Summer Street NE  
Salem, OR 97310-1337  
(503) 378-3805  
FAX (503) 378-4844  
TTY (503) 378-4615

February 2, 1995

Ash Grove Cement  
13939 N Rivergate Blvd.  
Portland, OR 97203

RE: State Waterway Lease LE-5146  
Formerly Known As ML-743

Dear Sir:

Due to reorganization of the Division, a new filing system made it necessary to change your file number. To ensure proper credit to your account please make certain that all future correspondence regarding this lease references LE-5146, and not ML-743. A copy of this letter should be attached to the original lease. All terms and conditions of the lease remain in full force and effect.

Pursuant to the terms of your waterway lease with the Division of State Lands, your rental rate has been redetermined. Based upon the rates set by the State Land Board, your new annual rental fee will be \$556.00, effective April 1, 1995. This letter is sent to you as a courtesy. An invoice will be sent to you from the accounting section approximately two weeks before the due date. Please contact the Field Operations Section if you would like a copy of our administrative rules governing these rates.

You may appeal any proposed rental or redetermined rental by filing a written appeal within 14 days of the date you are notified. An appeal must include market data or other information to support the request for review. [OAR 141-82-030(5)].

If you have any questions, please feel free to call me at 503-378-3805, extension 240.

Sincerely,

*Monica D. Love*

Monica D. Love  
Natural Resource Assistant  
Field Operations--Western Region

# ASH GROVE CEMENT COMPANY



RIVERGATE LIME DIVISION - WESTERN REGION  
13939 N. RIVERGATE BLVD.  
PORTLAND, OREGON 97203  
PHONE (503) 286-1677  
FAX (503) 289-2272

March 13, 2000

Division of State Lands  
775 Summer Street NE  
Salem, OR 97301-1279

Attention:

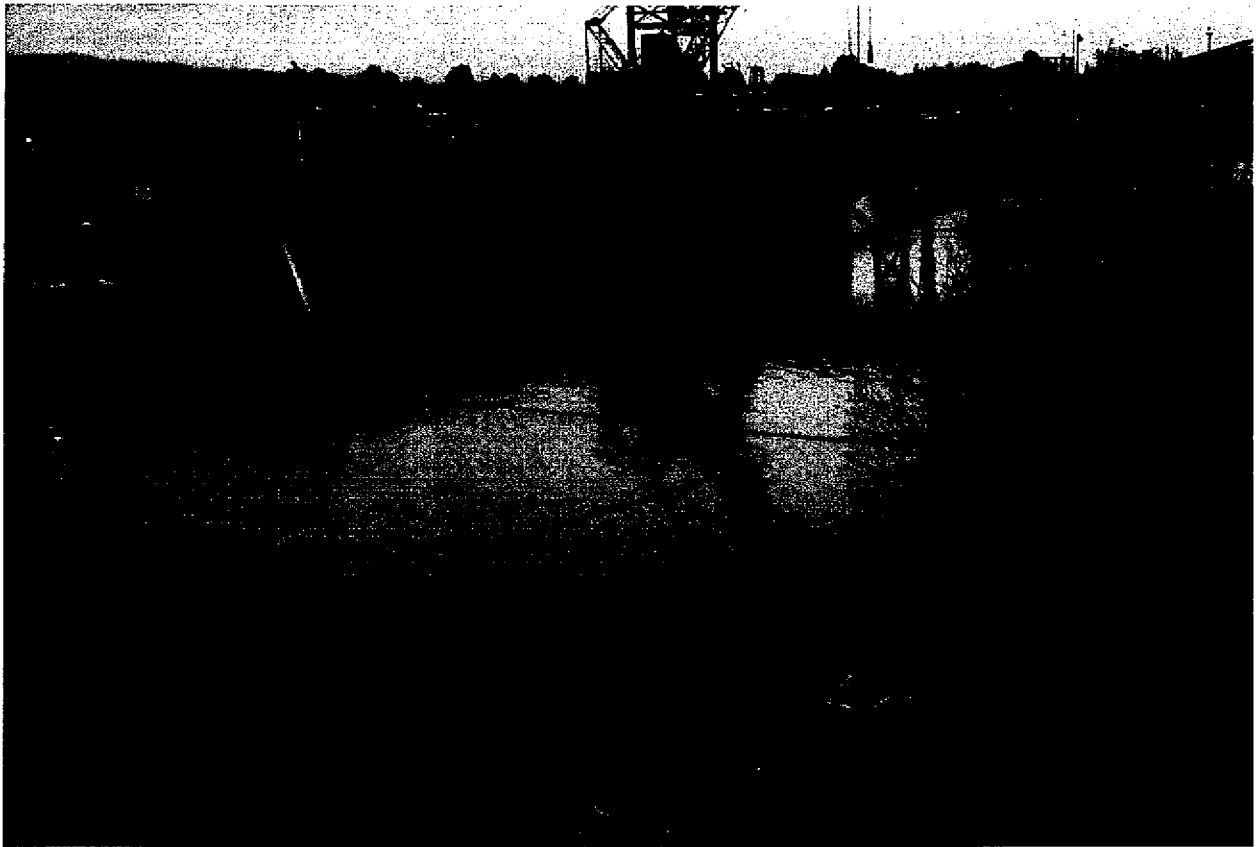
Jerry Hedrick  
Property Manager  
Easements and Leasing

**RE: Elimination of State Waterway Lease ML-5146**

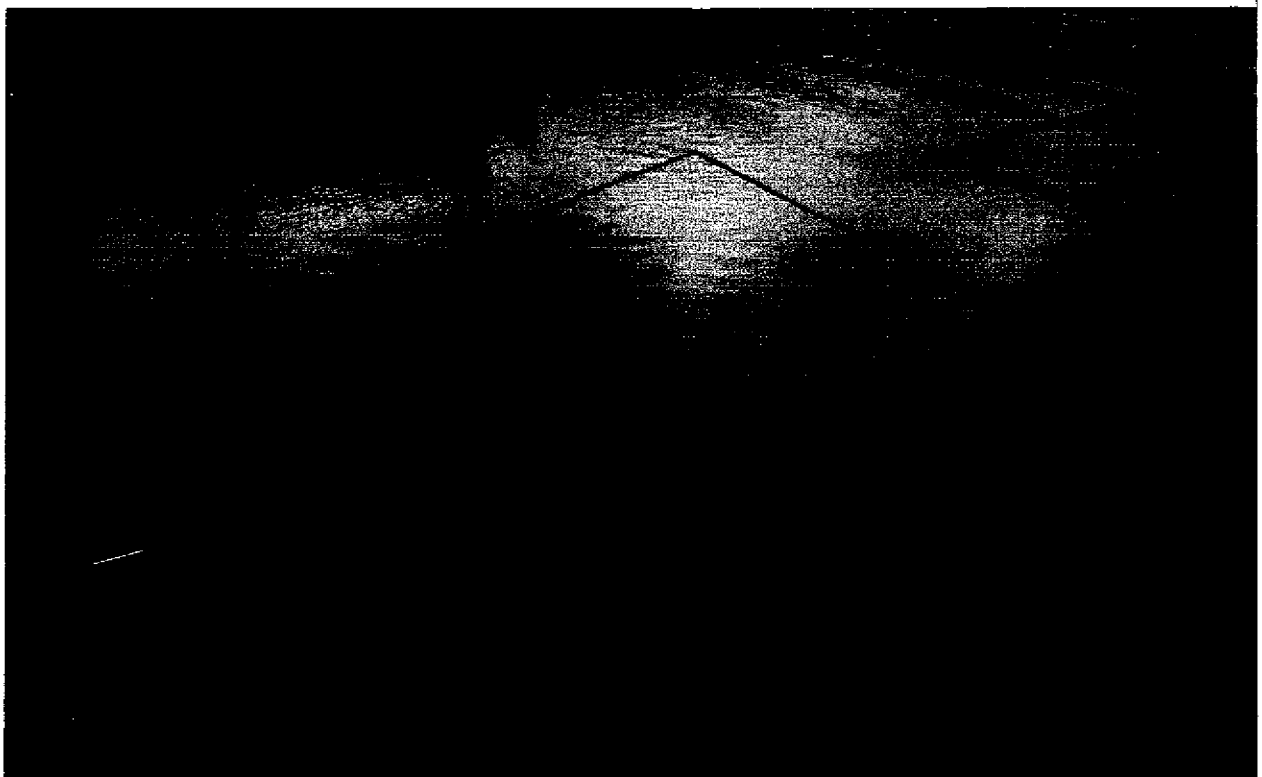
As per our conversation the latter part of March with Mr. Hedrick, we are submitting photos which will support our claim as to the elimination of the boat house which required the necessity of Waterway Lease ML-5146. We thank you for your help in this matter. If you have any questions, or if I can help you in any way, please give me a call.

Thanks Again,

Glenn Dollar  
Safety/ Environmental Manager  
Ash Grove Cement Company



**LINES REPRESENT PREVIOUS BOATHOUSE LOCATION**





# Oregon

John A. Kitzhaber, M.D., Governor

## Division of State Lands

775 Summer Street NE

Salem, OR 97301-1279

(503) 378-3805

FAX (503) 378-4844

TTY (503) 378-4615

March 21, 2000

JV02\ML-5146  
GLENN DOLLAR  
ASH GROVE CEMENT COMPANY  
12929 N RIVERGATE  
PORTLAND OR 97203

## State Land Board

John A. Kitzhaber  
Governor

Bill Bradbury  
Secretary of State

Jim Hill  
State Treasurer

RE: State Waterway Lease ML-5146

Dear Mr. Dollar:

The Division of State Lands received your request to cancel state waterway Lease ML-5146. We received your photos of the site on March 15, 2000, revealing that the leasehold area has been restored to its original natural condition. State waterway lease ML-5146 is hereby canceled effective March 31, 2000. No further payments are required. You are not authorized to make any use or exercise any control over the submerged lands.

If you have any further questions regarding the Division's programs, please call me. Thank you.

Sincerely,

Jerry Hedrick  
Property Manager  
Easements and Waterway Leasing

J:\leasess\ Cancel Lease Approved.doc

c: Faye Pitts, Accounting  
County Assessor's Office



**STATE OF OREGON  
DIVISION OF STATE LANDS  
SUBMERGED AND SUBMERSIBLE LAND LEASE**

ML-885

**1. PARTIES**

The parties to this Lease are the STATE OF OREGON, acting by and through the Division of State Lands, ("STATE") and Columbia Aluminum Corporation, ("LESSEE").

**2. LEASED PREMISES**

STATE, for the consideration and upon the terms and conditions herein mentioned, does hereby lease to the LESSEE the following property:

All of the submerged lands fronting tax lot 33 in the SW 1/4 of Section 21, Township 1 North, Range 1 East, Willamette Meridian, (Multnomah County Assessor's Map 2627) which lies beneath silo #3 as shown by survey 84-108 dated December 26, 1984 (attachment A) by Cyle M. Nold, encompassing an area of 0.04 acres.

hereinafter referred to as the "Leased Premises."

**3. PURPOSE**

LESSEE shall have exclusive possession of the Leased Premises for the sole purpose of silo storage of alumina at unloading facility and for no other purpose without prior written consent of STATE. This instrument does not guarantee that any particular use may be made of the Leased Premises. LESSEE should check with appropriate city or county planning department to verify approved uses.

**4. TERM OF LEASE**

The LESSEE, subject to compliance with the terms and provisions of this Lease, shall have and hold the Leased Premises for the purposes stated above from December 1, 1990, through November 30, 1998.

**5. LEASE PAYMENT**

The lease payment to be paid by LESSEE to STATE shall be \$239.00 per year or the amount set by redetermination at any time after the first anniversary date of the Lease. Receipt of the first year's lease payment is hereby acknowledged. "Redetermination" means a rent increase made pursuant to paragraph 6 of this Lease. Lease payments shall be payable annually and shall be due on the 1st day of December in advance. Payments shall be sent to the Division of State Lands, 775 Summer Street NE, Salem, Oregon 97310-1337. STATE shall give LESSEE 30 days advance notice of the due date and amount of the lease payment due.

**6. LEASE PAYMENT INCREASES**

Lease payment increases shall be made in accordance with the lease provisions of the Oregon Administrative Rules applying to state-owned submerged and submersible lands which are in effect at the time of redetermination. Lease payment increases may be appealed by the LESSEE. LESSEE must file its appeal in writing within 14 days of the notice of increase. The notice of appeal is to be sent to the attention of the Director, Division of State Lands, 775 Summer Street NE, Salem, Oregon 97310-0230, and must include market data or other information to support the request for review. Upon filing of an appeal, the STATE will schedule an informal hearing before the Director or designee. Neither party to a redetermination appeal is entitled to recover attorney's fees.



7. ACCESS TO PROPERTY AND RECORDS

STATE shall have access to the Leased Premises at all reasonable times for the purpose of ensuring compliance with the terms and conditions of this Lease. STATE shall have the right to examine pertinent records of LESSEE for the purpose of ensuring compliance with the Lease and for the purpose of redetermining the lease payment rate.

8. DELIVERY OF PREMISES

Delivery of the Leased Premises will occur upon the date of execution of this Lease. STATE will not provide a survey or pay any costs of a survey to determine boundaries. It is the LESSEE's responsibility to make an accurate determination of the boundaries. The legal description provided by STATE is drawn from an assessor's map and other data deemed to be reliable. If LESSEE elects not to have a survey performed and a discrepancy or boundary overlap later becomes evident, STATE, at its discretion, may provide a corrected description of the Leased Premises.

9. RESERVATIONS

The interest of LESSEE under this Lease shall at all times be subject to STATE's right to grant rights-of-way in and over said property or a portion of the property for other purposes, including, but not limited to, railroads, telegraph and telephone lines, pipelines, irrigation or other water canals and ditches, and to STATE's right to lease all or part of the property for the exploration, discovery, development and production of oil, gas, or minerals of any nature whatsoever, provided the right-of-way or lease does not unreasonably interfere with the purpose of this Lease.

10. CONDITIONS OF THE PROPERTY

LESSEE certifies that it has inspected the Leased Premises and is fully informed as to their condition. LESSEE agrees to accept the Leased Premises as is and with all faults. LESSEE acknowledges that no representations or warranties of any kind have been made by STATE.

11. COMPLIANCE WITH LAW

LESSEE shall comply with all applicable federal, state, and local statutes, ordinances, rules and regulations in its use of the Leased Premises. This Lease does not give LESSEE permission to conduct any use on the Leased Premises which is not in conformance with applicable land use requirements, and it is the LESSEE's responsibility to determine and comply with those and all other requirements.

12. TAXES, LIENS, ASSESSMENTS, CHARGES

LESSEE shall pay before they become delinquent all taxes, assessments, penalties, fines, charges, rates or liens of any nature whatsoever that may be levied, assessed, charged, imposed or claimed on or against the Leased Premises or any improvements or fixtures thereon or appurtenances thereto. If LESSEE fails to pay any taxes, assessments, penalties, fines, charges, rates or liens, within ten (10) days after notice that such sums are due, STATE may pay such sums. Any such sums paid by STATE shall be reimbursed on demand with interest at the maximum legal rate pursuant to ORS 82.010 from the date of expenditure by STATE until paid.

13. PREVENTION OF WASTE, DAMAGE AND INJURY

LESSEE shall exercise reasonable diligence in its operation on and from said Leased Premises; shall carry on all operations hereunder in a good and workmanlike manner having due regard for public safety and the prevention of waste and for the restoration and conservation of said Leased Premises for future use, and shall take all reasonable steps to avoid damage to soil, timber, fish and fish habitat, wildlife and wildlife habitat and water quality of both ground water and surface water; shall make all

reasonable efforts to minimize interference with existing navigational and recreational activities and scenic values; shall substantially restore the Leased Premises to its original condition and shall do all things reasonably necessary to minimize erosion.

14. EXCLUSIVITY

Subject to the provision of Section 9 (Reservations), the rights and privileges granted under this Lease are exclusive, except that LESSEE shall not unreasonably interfere with the public's right of navigation, commerce, fishing and recreation in the open water areas of the Leased Premises.

15. PUBLIC SAFETY

Subject to the provision of Section 14 (Exclusivity), the LESSEE may restrict entry to any portion of the Leased Premises as may be necessary to protect persons and property from harm arising from or in connection with the LESSEE's activities upon the Leased Premises.

16. ASSIGNMENT OR SUBLEASE

With respect to any assignment, mortgage, or sublease, the following provisions shall apply:

16.1 RESTRICTIONS: Except as provided for in subsection 16.2, LESSEE's interest in the Leased Premises or any part thereof shall not be assigned, mortgaged or subleased, nor shall any right of use of said Leased Premises be conferred on any third person by another means without the prior consent of STATE. Said consent shall not be unreasonably withheld or delayed. This provision shall apply also to all transfers by operation of law. Except as provided in subsection 16.2, any assignment, or attempted assignment, subletting, or attempted subletting, or grant of right of use, or attempted grant of right of use without such consent, shall be absolutely null and void and shall, at the option of STATE, terminate all rights of the LESSEE under or by virtue of this Lease. STATE may, in its discretion, consent to an assignment or sublease provided the following conditions are satisfied:

16.1.1 A fee of \$125 is prepaid to cover administrative costs, and

16.1.2 LESSEE has satisfied all conditions of the lease precedent to assignment or sublease, and

16.1.3 LESSEE and its assignee have completed a standard assignment form or new lease form as required by STATE, and have assured the STATE that the assignee or sublessee has the capability to perform on the Lease, and

16.1.4 STATE determines that such assignment or sublease is in the best interest of the STATE.

16.2 PERMITTED ASSIGNMENTS: The following assignments, mortgages and security interests, and subleases of the LESSEE's interest in the Leased Premises shall be allowed without further STATE approval:

16.2.1 Subleases and subsubleases of portions of the LESSEE's interest in the Leased Premises, in the ordinary course of LESSEE's business or portions thereof for uses of the Leased Premises approved under this Lease.

16.2.2 Any mortgage(s), trust deed(s) or other encumbrance(s) which LESSEE may cause to attach to LESSEE's interest in the Leased Premises (1) in connection with the acquisition or refinancing(s) of the acquisition of the improvements in, on or about the Leased Premises and (2) in connection with financing

ML-885

Page 3 of 9

and refinancing (a) development, construction, reconstruction, maintenance or repair of improvements on the Leased Premises and (b) operations on or about the Leased Premises. Within ten (10) days of any transfer pursuant to this subsection 16.2.2, LESSEE shall provide STATE the name and business address of any entity obtaining a security interest pursuant to this subsection 16.2.2.

- 16.2.3 Transfers to any entity or entities which controls, is controlled by, or is under common control with LESSEE.

## 17. ALTERATIONS AND IMPROVEMENTS

LESSEE shall obtain the written consent of STATE prior to making any alterations to the Leased Premises or improvements upon the Leased Premises.

## 18. DEFAULT

- 18.1 DEFAULT, NOTICE AND CURE BY LESSEE: A default by the LESSEE shall occur if any of the following shall occur and if said default shall continue and not be remedied within sixty (60) days after STATE shall have given notice specifying the breach (within ten (10) days for delinquency or failure to pay rent.)

18.1.1 Delinquency or failure to pay rent in the amounts and at the time specified in the Lease.

18.1.2 Failure of LESSEE to comply with any term or condition imposed by the STATE in the Lease.

18.1.3 Failure of LESSEE to use the Leased Premises for the purposes authorized under the terms of the Lease.

18.1.4 LESSEE maintaining a nuisance on the Leased Premises.

18.1.5 Insolvency of LESSEE; an assignment by LESSEE for the benefit of creditors; the filing by LESSEE of a voluntary petition in bankruptcy; an adjudication that LESSEE is bankrupt or the appointment of a receiver of the properties of LESSEE; the filing of any involuntary petition of bankruptcy and the failure of LESSEE to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of LESSEE to secure discharge of the attachment or release of the levy of execution within ten (10) days.

18.1.6 Failure by LESSEE to remove any lien or encumbrances placed upon the Leased Premises other than a lien or encumbrance on LESSEE's interest permitted by Section 16 of this Lease.

- 18.2 MORTGAGEE PROTECTION PROVISION: Whenever the STATE shall deliver any notice or demand to the LESSEE with respect to any breach or default by the LESSEE in its obligations or covenants under this Lease, the STATE shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by this Lease at the last address of such holder shown in the records of the STATE. After any default in or breach of the Lease by the LESSEE or its successor in interest, each holder of any mortgage permitted under the Lease shall (insofar as the rights of the STATE are concerned) have the right after the failure of the LESSEE to cure or remedy said default or breach, at its option, to cure or remedy such breach or default (or such breach or default to

the extent that it relates to the part of the land covered by its mortgage) within sixty (60) days and to add the cost thereof to the mortgage debt and the lien of its mortgage. The mortgage holder's exercise of its option to cure or remedy any default by LESSEE shall not constitute grounds for termination of this Lease by STATE. In the event the holder of any mortgage which LESSEE has caused to attach to LESSEE's interest in the Leased Premises forecloses on the leasehold estate then STATE shall enter into a new lease with that lienholder on the same terms and conditions as this Lease.

19. LATE PAYMENT PENALTY

If STATE has not received the full amount of the lease payment due within ten (10) calendar days from the due date, STATE may impose a late payment penalty on the LESSEE in the amount not to exceed five percent (5%) of the overdue payment. The late fee penalty may only be charged once on any payment due. Alternatively, at the STATE's option, a late payment penalty may be charged which is the interest due at the maximum legal rate pursuant to ORS 82.010 on the late payment from the date due until paid.

20. TERMINATION

20.1 TERMINATION UPON LESSEE'S DEFAULT: In the event of a default by LESSEE, the Lease may be terminated at the option of STATE by thirty (30) days advance notice in writing to LESSEE. In the event the Lease is terminated by either party, all remedies afforded under this Lease in Section 24 herein shall survive such termination. LESSEE shall have thirty (30) days after date of termination to remove all fixtures and property from the Leased Premises. Failure to remove such items within the thirty (30) day period will constitute abandonment by the LESSEE and, subject to the rights of any secured parties having a security interest in such fixtures and property, the STATE shall take title to the property after the expiration of thirty (30) days, in which event STATE may reenter, take possession of the Leased Premises and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages directly resulting from such reasonable force.

20.2 STATE'S OPTION TO MITIGATE: Following reentry, STATE may relet the Lease Premises and in that connection make any suitable alteration to the Leased Premises or change the character or use of the Premises but STATE shall not be required to relet for any use or purpose (1) which is different from that specified in the Lease or (2) which STATE may reasonably consider injurious to the Premises or (3) to any LESSEE which STATE may reasonably consider objectionable. STATE may relet all or part of the Leased Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions.

20.3 DAMAGES RECOVERABLE UPON TERMINATION: In the event of termination on default, as provided by Section 18 of this Lease, STATE shall be entitled to recover the following amounts as damages:

20.3.1 The loss of reasonable rental value from the date of default until a new lease has been, or with the exercise of reasonable efforts could have been, secured.

20.3.2 The reasonable cost of reentry and reletting, including the reasonable and necessary costs of any clean-up, refurbishing, removal of LESSEE's property and fixtures, or any other necessary expense directly resulting from LESSEE's failure to quit the Leased Premises upon termination and to leave them in the required conditions, including reasonable attorneys fees, court costs, and advertising costs.

20.3.3 Any excess of the value of the rent and all of LESSEE's other obligations under this Lease over the reasonable expected return from the Premises for the period commencing on the earlier of the date of trial or the date the Premises are relet and continuing through the end of the term. The present value of future amounts will be computed using a discount rate equal to the prime loan rate of major Oregon banks in effect on the date of trial.

20.4 TERMINATION UPON MUTUAL CONSENT: This Lease may also be terminated by mutual written consent of LESSEE and STATE.

21. DELIVERY OF PREMISES: SURRENDER

In the event the Lease is terminated, or upon expiration, LESSEE shall have thirty (30) days within which to vacate the Leased Premises and shall surrender the Leased Premises in substantially the original condition as of the date of this Lease. STATE may require LESSEE to restore the Leased Premises to the original condition as of the date of this Lease or STATE may itself restore the Leased Premises and recover its reasonable and necessary restoration costs from LESSEE.

22. FIXTURES AND PERSONAL PROPERTY

All fixtures and personal property placed upon the Leased Premises during the term shall, upon expiration or termination of the Lease, become the property of STATE if not removed by LESSEE within thirty (30) days as provided in subsection 20.1 and if not subject to the rights of any secured party having a security interest in such fixtures or personal property. LESSEE shall repair any physical damage resulting from such removal. If LESSEE fails to remove such fixtures, this shall constitute an abandonment of the property, and STATE may retain the property and all rights of LESSEE with respect to it shall cease. In the event of such abandonment, STATE may remove such fixtures and personal property and repair any physical damage resulting from such removal and charge the reasonable and necessary costs of removal and repair to LESSEE with interest at the maximum legal rate pursuant to ORS 82.010 from the date of expenditure by STATE.

23. HOLDOVER

If LESSEE does not vacate the Leased Premises at the time required, upon expiration or termination of this Lease, STATE shall have the option to treat LESSEE as a tenant from month to month, subject to all of the provisions of this Lease except the provisions for term. Failure of LESSEE to remove fixtures, equipment and/or other property which LESSEE is required to remove under this Lease, in the manner provided for in sections 20 and 22, shall constitute a failure to vacate to which this paragraph shall apply if the property not removed will substantially interfere with occupancy of the Leased Premises by another lessee or with occupancy by STATE for any purpose including preparation for a new lessee.

If a month to month tenancy results from a holdover by LESSEE under the above paragraph, the tenancy shall be terminable at the end of any monthly lease payment period on written notice from STATE given not less than ten (10) days prior to the termination date which shall be specified in the notice. LESSEE waives any notice which would otherwise be provided by law with respect to a month to month tenancy.

24. STATE'S RIGHT TO CURE DEFAULTS

If LESSEE fails to perform any obligation under this Lease, STATE shall have the option to do so after thirty (30) days' written notice to LESSEE unless otherwise specified in this Lease. All of STATE's reasonable and necessary expenditures to correct the default shall be reimbursed by LESSEE on demand with interest at the maximum legal rate pursuant to ORS 82.010 from the date of expenditure by STATE until paid.

In the event any violation or breach of the provisions of this lease is causing damage to the Leased Premises or the LESSEE is utilizing the Leased Premises in a manner not permitted by the provisions of this Lease, or in any case damages are occurring to the Leased Premises, STATE may immediately enter upon the Leased Premises and take such action as necessary to cease such damages or use. LESSEE shall be liable to STATE for all reasonable and necessary costs incurred in correcting such violations.

25. RIGHT TO SUE MORE THAN ONCE

STATE may sue periodically to recover damages for the period corresponding to the remainder of the lease term and no action for damages shall bar later action for damages subsequently accruing.

26. REMEDIES CUMULATIVE

The remedies contained in this Lease shall be in addition to and shall not exclude any other remedy available at law or in equity, and exercise by either party of any one or more of such remedies shall not preclude the exercise by it at the same or different times of any other such remedies for the same default or breach by the other party.

27. HAZARDOUS WASTE

LESSEE shall refrain from storing on, or discharging from or onto, the Lease Premises any hazardous wastes or toxic substances as defined in 42 USC § 9601-9657, except as otherwise permitted by law.

28. INSURANCE

The LESSEE agrees to maintain during the term of this Lease, comprehensive or commercial general liability insurance covering personal injury and property damage, naming the STATE as additional insured. This insurance shall include contractual liability coverage for the indemnification provided under this Lease. Coverage limits shall not be less than the limits of liability set forth in the provisions of ORS 30.270(1) as now in effect or as hereafter amended. ORS 30.270(1) currently requires that the coverage limits shall not be less than \$1,000,000.00 combined single limit per occurrence. The insurance shall be in a form and with companies acceptable to STATE. Such insurance may be evidenced by certificates or by copies of policies. Such evidence shall be provided to STATE prior to the commencement of any operations or activity under this Lease.

29. INDEMNIFICATION

LESSEE agrees to indemnify, defend and hold STATE, its officers, employees, and its agents harmless from any and all damages, claims, actions, costs and expenses arising in whole or in part out of acts or omissions related to this Lease. STATE shall have no liability to LESSEE for any loss or damage caused by third parties or by any condition of the LEASED PREMISES.

30. ATTORNEY FEES

If suit or action is instituted in connection with any controversy arising out of or in connection with this Lease, the prevailing party shall be entitled to recover all costs and disbursements incurred, including such sum as the court may adjudge reasonable as attorney fees at trial and on any appeal of the suit or action.

31. MODIFICATION

This agreement may be changed, altered or amended only by mutual written consent of the parties.

32. MERGER

This Lease constitutes the entire agreement between the parties, and no oral statement, representation or agreement not herein expressed shall be binding upon any party.

33. NON WAIVER

Waiver by either party of strict performance of any term of this Lease on any occasion shall not be construed as a waiver nor prejudice either party's right to require strict performance of the same provision in the future or of any other provision.

34. PARTNERSHIP

STATE is not a partner nor a joint venturer with LESSEE in connection with the business carried on under this Lease and shall have no obligation with respect to LESSEE's debts or other liabilities.

35. NOTICES

Any notices required or permitted under this Lease shall be in writing and deemed given three (3) days after deposited, postage prepaid, in the United States mail as regular mail and directed to the address provided below or to such other address as may be specified from time to time by either of the parties in writing.

For STATE:

DIVISION OF STATE LANDS  
775 Summer Street NE  
Salem, OR 97310

For LESSEE:

Columbia Aluminum Co. attn: Gerald Miller  
Name (Print)

7600 N.E. 41<sup>st</sup> Street, Suite 325  
Current Mailing Address

Vancouver WA 98662  
City State zip

36. EXHIBITS

All exhibits hereto are expressly incorporated herein by reference and made a part hereof.  
IN WITNESS WHEREOF the parties have executed this Lease.

LESSEE

April 24, 1992  
Date

Gerald F. Miller  
Signature Secretary

STATE OF Washington  
County of Clark

} ss

The foregoing instrument was acknowledged before me this 24th day of April, 1992,  
by Gerald F. Miller (officer or agent of corporation), the Secretary (title of officer or agent)  
of Columbia Aluminum corporation, a Delaware (state or place of incorporation)  
corporation, on behalf of the corporation.

Susan D. Cruz  
Signature

My Commission Expires 11-9, 19 94.

STATE OF OREGON, DIVISION OF STATE LANDS

5-1-92  
Date

Stephen J. Purchase  
Assistant Director



## STATE LEASE ASSIGNMENT

### ASSIGNMENT AND ASSUMPTION OF STATE LEASE (NSC SMELTER TO ASH GROVE)

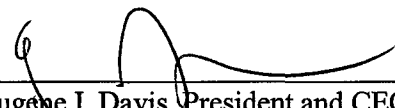
FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, **NSC SMELTER LLC**, a Delaware limited liability company ("**Assignor**"), does hereby sell, transfer, convey and assign to **ASH GROVE CEMENT COMPANY**, a **Delaware** corporation ("**Assignee**"), all of Assignor's right, title and interest, if any, in and to that certain State of Oregon Submerged and Submersible Land Lease (ML-10587) initially between the State of Oregon and Goldendale Aluminum Company, as predecessor lessee, and dated February 8, 1999 by lessee and March 23, 1999 by the State of Oregon (the "**State Lease**") together with all right title and interest of Assignor in and to the improvements located on the State Lease premises. Assignor warrants that to Assignor's knowledge, the State Lease is not in default. Assignee hereby assumes and agrees to pay and perform as and when due all obligations of the lessee under the State Lease coming due from and after the effective date of this assignment. This assignment is supplemental to and intended to transfer to the same interest in the State Lease as evidenced by that certain State of Oregon Assignment and Request for Consent to Assignment of State Submerged and Submersible Lands Lease dated November 28, 2005 by NSC, November 21, 2005, by AGCC and December 17, 2005 by the State of Oregon with respect to the State Lease.

IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment and Assumption of State Lease to be executed and delivered effective as of the 29 day of December, 2005.

**ASSIGNOR:**

**NSC SMELTER LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

  
Eugene I. Davis, President and CEO

**ASSIGNEE:**

**ASH GROVE CEMENT CORPORATION,**  
a Delaware corporation

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**STATE LEASE ASSIGNMENT**

**ASSIGNMENT AND ASSUMPTION OF STATE LEASE  
(NSC SMELTER TO ASH GROVE)**

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, NSC SMELTER LLC, a Delaware limited liability company ("Assignor"), does hereby sell, transfer, convey and assign to ASH GROVE CEMENT COMPANY, a Delaware corporation ("Assignee"), all of Assignor's right, title and interest, if any, in and to that certain State of Oregon Submerged and Submersible Land Lease (ML-10587) initially between the State of Oregon and Goldendale Aluminum Company, as predecessor lessee, and dated February 8, 1999 by lessee and March 23, 1999 by the State of Oregon (the "State Lease") together with all right title and interest of Assignor in and to the improvements located on the State Lease premises. Assignor warrants that to Assignor's knowledge, the State Lease is not in default. Assignee hereby assumes and agrees to pay and perform as and when due all obligations of the lessee under the State Lease coming due from and after the effective date of this assignment. This assignment is supplemental to and intended to transfer to the same interest in the State Lease as evidenced by that certain State of Oregon Assignment and Request for Consent to Assignment of State Submerged and Submersible Lands Lease dated November 28, 2005 by NSC, November 21, 2005, by AGCC and December 17, 2005 by the State of Oregon with respect to the State Lease.

IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment and Assumption of State Lease to be executed and delivered effective as of the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**ASSIGNOR:**

**NSC SMELTER LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

Eugene I. Davis, President and CEO

**ASSIGNEE:**

**ASH GROVE CEMENT CORPORATION,**  
a Delaware corporation

By: \_\_\_\_\_

Printed Name: CHARLES T. WIEDENHOFT

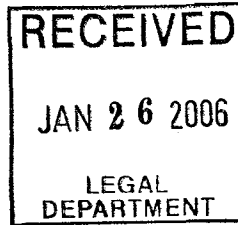
Title: PRESIDENT and COO



# Oregon

Theodore R. Kulongoski, Governor

January 23, 2006



## Department of State Lands

775 Summer Street NE, Suite 100  
Salem, OR 97301-1279  
(503) 378-3805  
FAX (503) 378-4844  
[www.oregonstatelands.us](http://www.oregonstatelands.us)

## State Land Board

Theodore R. Kulongoski  
Governor

Bill Bradbury  
Secretary of State

Randall Edwards  
State Treasurer

JV410\ML-10587  
STEPHEN RYAN  
ASH GROVE CEMENT COMPANY  
11011 CODY STREET  
OVERLAND PARK KS 66210

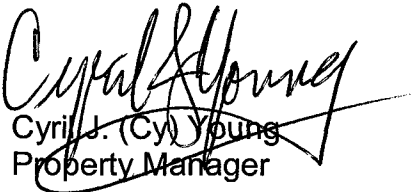
RE: State Waterway Lease ML-10587

Dear Mr. Ryan:

Enclosed is your original of the fully executed state waterway lease for ML-10587, covering the remaining term of the original lease December 31, 1998 through November 30, 2018.

If you have any questions or comments, please contact me at your convenience, 503-378-3805, extension 245, or property manager assistant Jenni Vickers, extension 242.

Sincerely,

  
Cyril J. (Cy) Young  
Property Manager

Enclosure

**STATE OF OREGON**  
**DEPARTMENT OF STATE LANDS**  
**SUBMERGED AND SUBMERSIBLE LAND LEASE**

ML-10587  
APP#9956

The State of Oregon, by and through the Oregon State Land Board and the Department of State Lands ("State"), hereby leases to the person(s) herein named ("Lessee"), the following described lands on the terms and conditions stated herein (the "Lease"):

|                          |   |
|--------------------------|---|
| NAME of LESSEE:          | ADDRESS:                                    |
| Ash Grove Cement Company | 11011 Cody Street<br>Overland Park KS 66210 |

Legal classification of Lessee is a Oregon Corporation,

Lands situated in Multnomah County more fully described as follows:

All of the submerged lands fronting tax lot 400 in the Southwest ¼ of Section 21, Township 1 North, Range 1 East, Willamette Meridian, (Multnomah County Assessor's Map 1N1E21CD) which lies beneath silo #3 as shown on the attached Exhibit "A".

Total number of acres: 0.04 acres, more or less.

Hereinafter referred to as the "Leasehold".

**SECTION 1 - LEASE TERM AND RENEWAL**

- 1.1 Term: This Lease shall continue for a remaining period of 12 years of the original lease commencing on December 31, 1998 (original Lease Anniversary Date), the month and date of which shall be known as the "Lease Anniversary Date," and expiring on November 30, 2018 (original Lease Expiration Date), which date shall be known as the "Lease Expiration Date."
- 1.2 Renewal: Lessee shall have an option to renew this Lease for an additional period of 15 years after the original and each renewal lease term provided that Lessee has submitted a completed lease renewal application form to State not less than one hundred and eighty (180) days prior to the Lease Expiration Date. Upon receipt of such application, this Lease shall be renewed by State unless:
- 1.2.1 State determines, in its sole discretion, that Lessee has not complied with the terms of this Lease, the applicable statutes and Oregon Administrative Rules; or

1.2.2 Lessee is no longer the preference right holder as provided in ORS 274.040(1) and defined in OAR 141-082-0020(49); or

1.2.3 State determines that the renewal of this Lease for all or any portion of the Leasehold would be contrary to local, state, or federal law, or would be inconsistent with the policies set forth in OAR 141-082-0010.

- 1.3 Except as otherwise provided in this Lease, State shall provide Lessee two (2) years advance written notice of its intent to not renew this Lease for all or any portion of the Leasehold. In the event State determines not to renew this Lease, but less than two (2) years remain in the Lease term, State shall, at Lessee's request, extend the term of this Lease to complete the two (2) year notice period, within which time Lessee shall vacate that portion of the Leasehold upon which the Lease is not being renewed and relocate any sublessees in an orderly fashion.

## **SECTION 2 - AUTHORIZED USES**

- 2.1 Purpose: This Lease grants Lessee the right to use the Leasehold for the specific purpose(s) described below in accordance with the Lease terms and conditions, applicable local (including local comprehensive land use planning and zoning ordinances), state and federal laws and the applicable Oregon Administrative Rules.

Sole purpose of silo storage of alumina and cement at unloading facility

## **SECTION 3 - RENT CALCULATION AND ADJUSTMENTS**

- 3.1 Initial Annual Rent: The rental payment to be paid by Lessee to State (the "Rent") for the first year of the Lease shall be \$609.28, based on the Flat Rate as provided in Section 3.1.1. Receipt of the first year's Rent is hereby acknowledged.

3.1.1 The initial annual Rent shall be calculated as follows:

| <b>Use Class</b>                    | <b>Area (square ft.)</b> | <b>Rate Choice</b> | <b>Annual Rent</b> |
|-------------------------------------|--------------------------|--------------------|--------------------|
| Marine Industrial<br>Marine Service | 1700 square feet         | Flat Rate          | \$609.28           |
| <b>TOTAL</b>                        |                          |                    | <hr/> \$609.28     |

- 3.2 Annual Rent Adjustment: The Rent shall be adjusted annually in accordance with the provisions of OAR 141-082-0100 in effect at the time. Each payment shall be due on the Lease Anniversary Date established in Section 1.1.

## **SECTION 4 - MODIFICATION OF LEASEHOLD AREA OR USE**

- 4.1 Modification of Leasehold Area or Use: Lessee may request that State expand or reduce the size, or change the authorized use, of the Leasehold using a form provided by State. However, no such change shall occur unless authorized in writing by State.

4.1.1 This Lease may be amended to reduce the Leasehold area only if the portion of the Leasehold to be removed from the Lease is not in use and does not contain any structures or improvements (an "Improvement"). If the amendment results in a reduction of Rent due under the Lease, such reduction shall become effective commencing on the Lease Anniversary Date that falls at least twelve (12) months after the later of: (a) the date of the change of area; or (b) the date of the issuance of State's written approval.

4.1.2 Requests to change an authorized use or increase the Leasehold area shall be processed and reviewed in the same manner as a new lease application.

4.1.3 Notwithstanding any reduction in the Leasehold area under this section, Lessee shall remain liable for any violation of Section 5.5 or 5.6 occurring on lands removed from the Leasehold prior to the amendment removing such lands.

## **SECTION 5 - RESERVATIONS AND RESTRICTIONS**

- 5.1 Compliance: State shall have access to the Leasehold at all reasonable times for the purpose of evaluating and ensuring compliance with the terms and conditions of this Lease. State shall have the right to examine pertinent records of Lessee for the purpose of ensuring compliance with the Lease.

- 5.2 Reservations: State reserves:

5.2.1 All rights to coal, oil, gas, geothermal resources and other minerals, and all deposits of clay, stone, gravel and sand valuable for building, mining, or commercial purposes including, without limitation, the right to explore, mine, develop, produce and remove such minerals and other deposits with the right of ingress and egress thereto, and to terminate this Lease as to all or any portion of the Leasehold when required for these purposes with one hundred twenty (120) days prior written notice to Lessee or as otherwise provided by law.

5.2.2 The right to enter in and upon the Leasehold at any time for purposes of inspection or management.

5.2.3 The right at any time to grant easements across the Leasehold for tunnels, telephone and fiber optic cable lines, pipelines, power lines, or other lawful purpose, with right of ingress and egress thereto. State shall include in any

such grant of easement a requirement that the easement holder take all reasonable precautions to ensure that exercise of their easement rights does not unreasonably interfere with Lessee's use(s) authorized in the Lease.

5.2.4 All rights not expressly granted to Lessee are reserved by State.

- 5.3 Public Access and Recreational Use Reservation: All state-owned submerged and submersible land shall remain available and open to the public for commerce, navigation, fishing and recreation unless restricted or closed by State to public entry pursuant to the provisions of applicable Oregon Administrative Rules. Lessee may request State, but State is not obligated, to close the Leasehold to public entry or restrict recreational use by the public on all or portions of the Leasehold to protect persons or property from harm arising from or in connection with Lessee's activities.

This reservation shall not grant the public any right to use or occupy, without Lessee's permission, Lessee-owned property or structures authorized under this Lease.

- 5.4 Restriction on Use: Lessee shall:

5.4.1 Comply with all applicable local, state and federal laws and regulations affecting the Leasehold and the use thereof, including local comprehensive land use planning and zoning ordinances, and correct at Lessee's own expense any failure of compliance created through Lessee's fault or by reason of Lessee's use;

5.4.2 Dispose of all waste in a proper manner and not allow debris, garbage or other refuse to accumulate within the Leasehold; provided that, if Lessee allows debris, garbage or other refuse to accumulate within the Leasehold, State shall have the right to remove the debris, garbage and other refuse, and collect the cost of such removal from Lessee;

5.4.3 Not cut, destroy or remove, or permit to be cut, destroyed or removed, any vegetation that may be upon the Leasehold except with written permission of State. Lessee shall promptly report to State the cutting or removal of vegetation by other persons;

5.4.4 Conduct all operations within the Leasehold in a manner which conserves fish and wildlife habitat, protects water quality, and does not contribute to soil erosion or the growth of noxious weeds;

5.4.5 Maintain all buildings, docks, pilings, floats, gangways, similar structures, and other improvements located within the Leasehold in a good state of repair; and

5.4.6 Not unreasonably interfere with the public's trust rights of commerce, navigation, fishing or recreation.

5.5 Waste Water Disposal: In addition to any other applicable laws and regulations, Lessee shall comply with Oregon Department of Environmental Quality and Oregon State Marine Board requirements for sewage collection and waste water disposal for boats and floating structures.

5.6 Hazardous Substances:

5.6.1 Lessee shall not use, store, or dispose of, or allow the use, storage, or disposal within the Leasehold of any material that may pose a threat to human health or the environment, including without limitation, hazardous substances, pesticides, herbicides, or petroleum products (a "Hazardous Substance") except in strict compliance with applicable laws, regulations and manufacturer's instructions and shall take all necessary precautions to protect human health and the environment and to prevent discharge or release of any Hazardous Substance to the environment from the Leasehold.

5.6.2 Lessee shall keep and maintain accurate and complete records of the amount of all such Hazardous Substances stored or used on the Leasehold, and shall immediately notify State of any release or threatened release of any such Hazardous Substance to the environment from the Leasehold or otherwise attributable to operations or activities on the Leasehold.

5.6.3 In the event any Hazardous Substance is released, arising from or attributable, in whole or in part, to the Lease or any operations conducted or allowed by Lessee on the Leasehold, Lessee shall promptly and fully remediate such release in accordance with State and federal regulations and requirements. If Lessee fails to so remediate, State shall have the right to remove and remediate any release of a Hazardous Substance on the Leasehold or attributable to operations or activities conducted or allowed by Lessee on the Leasehold and to collect the cost of such removal or remediation from Lessee.

5.6.4 In addition to any duty to indemnify described elsewhere in this Lease, Lessee shall to the extent allowed by Oregon law, indemnify State against any claim or costs arising from or related to a release of a Hazardous Substance on or from the Leasehold arising from or attributable, in whole or in part, to the Lease or any operations conducted or allowed by Lessee on the Leasehold.

## **SECTION 6 - REQUIREMENTS**

6.1 Assignment and Sublease: Except as provided in Section 6.2, Lessee shall not assign this Lease or sublease the Leasehold or any portion of the Leasehold nor enter into any third party agreement respecting the Lease or the Leasehold without first obtaining the prior written consent of State pursuant to the requirements of the applicable Oregon Administrative Rules. Requests must be in writing and must be received by State at least thirty (30) calendar days prior to the effective date of sublease or assignment. State shall make a good faith effort to complete its review of such applications within thirty (30) days. If the



application is incomplete, or if State requests additional information concerning the proposed assignment or sublease, the time period for reviewing applications shall be extended and the proposed sublease or assignment shall be delayed pending the completion of such review. State reserves the right to condition its consent as it deems reasonably prudent, including the right to require changes to the terms of this Lease. Each assignee, sublessee, and third party interest shall be required to comply with all of Lessee's obligations under this Lease, and the applicable Oregon Administrative Rules. Lessee shall remain liable for the performance of all obligations under this Lease unless State's written consent expressly releases Lessee from further liability hereunder.

6.1.1 For the purposes of this section, if Lessee is a corporation or partnership or limited liability company, the transfer of any corporate stock or partnership or membership interest (including by operation of law) shall be deemed an assignment subject to the provisions of this Section if the result of said transfer shall be the change of management control or controlling interest of Lessee.

6.1.2 Lessee shall not grant a mortgage or security interest in this Lease without prior written consent of State, which consent shall not be unreasonably withheld. Any subsequent assignment by the creditor shall require the prior written approval of State.

6.2 Permitted Assignments and Subleases: Notwithstanding the provisions of Section 6.1 of this Lease, the following assignments, mortgages and security interests, and subleases of Lessee's interest in the Leasehold shall be allowed without further State approval:

6.2.1 Subleases of portions of Lessee's interest in the Leasehold area, in the ordinary course of Lessee's business for the purposes approved under this Lease as specified in Section 2.1;

6.2.2 Subleases of the entire Leasehold for a term that is less than one year for a purpose specified in Section 2.1; or

6.2.3 The transfer of ownership of Lessee's interest in the Lease to a surviving spouse or immediate family member following the death of Lessee; provided that, any other transfer of ownership following the death of Lessee shall be considered an assignment requiring State's approval.

6.3 Condition of Leasehold and Improvements: Lessee has inspected the Leasehold and Improvements, if any, and accepts the Leasehold and any such Improvements in their present condition, AS IS. State has made no oral or written representations concerning the condition of the Leasehold, or its Improvements, if any, nor their fitness or suitability for any purpose.

6.4 Liability: Lessee agrees to defend, indemnify and hold State harmless from and against all claims, demands, actions, suits, judgment, losses, damages, penalties, fines, costs, and expenses (including expert witness fees and costs

and attorney's fees in an administrative proceeding, at trial, or on appeal) arising from or attributable, in whole or in part, to the Lease or any operations conducted or allowed by Lessee on the Leasehold. As used in this Section 6.4 only, "State" means the State of Oregon and its boards, commissions, agencies, officers, employees, contractors, and agents.

- 6.5 Assessments: Lessee shall pay all taxes, assessments, or both, that are levied against the Leasehold, whether or not such taxes, assessments, or both, have been levied in the past against the Leasehold or State by the assessing agency.
- 6.6 Bond: State reserves the right to require Lessee to furnish to State a surety bond or an equivalent cash deposit or certificate of deposit, in an amount to be determined by State in the exercise of its reasonable discretion, which names the State of Oregon as co-owner to ensure that Lessee will perform in accordance with all terms and conditions of the Lease.

## SECTION 7 - MISCELLANEOUS

- 7.1 No Partnership: State is not a partner nor in a joint venture with Lessee in connection with any business carried on in connection with this Lease or the Leasehold and shall have no obligation with respect to Lessee's debts or other liabilities.
- 7.2 Non-Waiver: Waiver by either party of strict performance of any provisions of this Lease shall not be a waiver nor prejudice the party's right to require strict performance of the same provision in the future or of any other provision.
- 7.3 Notices: Any notice, communication, request, reply or advice, or duplicate thereof (herein severally and collectively, for convenience called "notice") provided or permitted to be given under this Lease to any person, entity, or party, or made or accepted by either party to any other party must be in writing and shall, unless otherwise in this instrument or by law expressly provided, be given or be served by:
- a) depositing the same in the United States mail, postage prepaid, registered or certified mail, with return receipt requested, or
  - b) personal delivery service with charges therefor billed to shipper, or
  - c) expedited delivery service with charges therefor billed to shipper, or
  - d) prepaid telegram, telex or facsimile, all such notices, however given, to be addressed to the party for whom the notice is intended at the address set forth below or at such other address as any party may have designated to any other party in the manner above provided.

Any notice or communication sent as herein provided shall be deemed received:

- a) upon receipt if sent by telegram, telex or facsimile or if personally delivered (provided that such delivery is confirmed by the receiving telex or facsimile operator, including electronic confirmation of receipt, or by the courier delivery service, as the case may be),

- b) three (3) business days after the date of deposit in a post office or other official depository under the care and custody of the United States Postal Service, if sent by United States mail;
- c) on the date of delivery by any expedited delivery service, or
- d) on the date any party declines to accept any notice given as herein provided.

No person or entity who is entitled to notice or is required to be given notice hereunder shall have an address, for the purposes of such notice, which is outside the continental United States; and any such person or entity shall designate an agent for the purpose of receiving notices hereunder whose address is within the continental United States. Any party may change its address for the purposes of receiving notices hereunder by giving notice of such change of address to the other party in the manner required for giving notices pursuant to this Section 7.3.

If to Tenant:

Ash Grove Cement Company  
11011 Cody Street  
Overland Park, KS 66210  
Telephone: 913-451-8900  
Fax: 913-451-8324

If Notices to Landlord:

Department of State Lands  
775 Summer Street, NE Suite 100  
Salem, OR 97301-11279  
Telephone: (503) 378-3805  
Fax: (503) 378-4844

If Rent Payments to Landlord:

Department of State Lands  
Unit 18  
PO Box 4395  
Portland, OR 97208-4395

7.3.1 Lessee shall provide State with a written notice of any change of address, change in corporation/partnership/ownership, or change in person(s) authorized to represent Lessee. State shall provide written acknowledgment of such Lessee written notices. Lessee's failure to receive such written acknowledgment within thirty (30) days of the date Lessee sent the original notice shall be constructive notice to Lessee that: (1) State has not properly received the notice, and (2) such attempted notice shall be of no force and effect until such time as the notice is actually received and acknowledged by State.

- 7.4 Liens: With the exception of mortgages or other security interests authorized by State under Section 6.1.2, Lessee shall immediately cause to be discharged any lien or other charge placed on the Leasehold, including land or improvements, arising directly or indirectly out of Lessee's actions. State may terminate this Lease if Lessee fails to discharge any such lien or charge or provide State with a sufficient bond covering the full amount of the lien after ten (10) days notice to do so by State. Lessee shall pay and indemnify State for all costs, damages or charges of whatsoever nature, including attorney's fees, necessary to discharge such liens or charges whether such costs, damages or charges are incurred prior or subsequent to any termination of this Lease.

7.5 Default: The following shall be events of default:

7.5.1 Failure of Lessee to pay any rent, tax, reimbursement or other charge or payment due hereunder within twenty (20) days of the date such payment is due. For the purposes of this subsection, if the due date for such payment is not otherwise stated in this Lease or otherwise defined in statute or administrative rule, such payment shall be due on the date set forth in the notice from State to Lessee informing Lessee of its obligation to pay such charge or payment.

7.5.2 Failure of Lessee to comply with applicable laws, Oregon administrative rules or any non-payment-related term or condition or obligation of the Lease within thirty (30) days after written notice by State specifying the nature of the deficiency. Upon timely request from Lessee, State may in its good faith discretion permit the deadline for curing such non-compliance to be extended if it finds that: (1) the default cannot reasonably be cured within the thirty (30) day period; (2) the interests of State will not be harmed by an extension; (3) such default was not due to the willful act or gross negligence of Lessee; and (4) State and Lessee are able to mutually agree upon a written plan and timeline for curing the non-compliance.

7.5.3 Insolvency of Lessee; the filing by Lessee of a voluntary petition in bankruptcy; an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee; the filing of any involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the Leasehold interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution within ten (10) days. If Lessee consists of two (2) or more individuals or business entities, the events of default specified in this paragraph shall apply to each individual or entity unless within ten (10) days after an event of default occurs the remaining individuals or entities produce evidence satisfactory to State that they have unconditionally acquired the interest of the one causing the default. If the Lease has been assigned under Section 6.1 of this Lease, the events of default specified in this subsection shall apply only with respect to the one then exercising the rights of Lessee under the Lease.

7.5.4 Notwithstanding the above, if State in good faith believes that a material default has occurred which may imperil State's rights in the land or its fiduciary duties under law, State may declare an immediate default without any right of Lessee to cure the deficiency.

7.6 Termination of Occupancy Upon Default: State shall have the right to terminate Lessee's right to occupy the Leasehold for any default by Lessee that remains uncured past the time provided in Section 7.5. State shall exercise its right to terminate Lessee's occupancy under this Section by providing notice to Lessee of the default and of State's intent to terminate Lessee's right of occupancy under the Lease upon the date provided in the notice. State shall be entitled to recover from Lessee all costs arising out of State's re-entry and, if State and

Lessee mutually agree to terminate the Lease as provided in Section 7.8, all costs of re-letting the Leasehold. If State and Lessee mutually agree to terminate the Lease, State shall be entitled to recover the amount of unpaid rent that otherwise would have been required to be paid under the Lease from the date of default until a new Lease has been secured or, if State and Lessee do not agree to terminate the Lease and State is unable to secure another lessee for the Leasehold, until such time as the Lease expires. All Improvements located on the Leasehold shall be disposed of as provided by Section 9.3 of this Lease. If Lessee owns a floating home and has placed such home on the Leasehold pursuant to the provisions of Section 2.1 of this Lease, the lease termination provisions of ORS 90.630 shall apply to the extent the provisions of this Lease are inconsistent with such statute.

7.7 State's Right to Cure Defaults:

7.7.1 If Lessee fails to perform any obligation under this Lease, State shall have the option to perform the obligation of the Lease after thirty (30) days written notice to Lessee. All of State's expenditures to carry out the obligation shall be reimbursed by Lessee on demand with interest at the rate of one percent (1%) per month accrued from the date of expenditure by State.

7.7.2 Notwithstanding the foregoing, in the event any violation of a term or condition of this Lease, including without limitation use of the Leasehold in a manner not permitted under the Lease, is causing damage to the Leasehold, or if damage to the Leasehold arises from some other cause, State may immediately enter upon the Leasehold and take such action as it deems necessary to stop such use or mitigate such damage. If the damage is due to a violation of the terms or conditions of this Lease, Lessee shall be liable for all costs incurred by State as a result of the violation and the action taken by State to mitigate such damage. State, at its option, may send notice to Lessee of such violation and, upon receipt of such notice, Lessee shall immediately cease such violation and repair or correct all damage caused by the violation. State's failure to provide any notice of a violation shall not be deemed a waiver of the violation by State or authorization to Lessee to continue or fail to correct the violation.

7.8 Termination Upon Mutual Consent: This Lease may be terminated by mutual written consent of Lessee and State.

7.9 Weed Control: Lessee shall control noxious weeds including aquatic weeds, plant pests and diseases within the Leasehold as directed by the local county weed control district, the Oregon Department of Agriculture or any other governmental authority which may now or in the future have authority with regard to the prevention or control, or both, of noxious weeds, plant pests or diseases, or as may be authorized or directed by State.

7.10 Holdover: If Lessee does not vacate the Leasehold at the time required at expiration or upon termination of the Lease, State shall have the option to treat Lessee as a tenant from month to month, subject to all of the provisions of this Lease except the provisions for term, renewal, and Rent. State shall have the

option to unilaterally establish a new Rent for the month-to-month tenancy, with said Rent payable monthly in advance. If a month-to-month tenancy results from holdover by Lessee under this paragraph, the tenancy shall be terminable at the end of any monthly rental period upon written notice from State given not less than thirty (30) days prior to the termination date which shall be specified in the notice.

- 7.11 Governing Law; Venue: This Lease and all matters related to the rights and responsibilities hereunder are governed by and subject to the laws of the State of Oregon and the administrative rules of the Department of State Lands and the State Land Board, as they may change from time to time. The Oregon Administrative Rules contain terms and conditions which relate to the rights and responsibilities of the parties hereunder, and such terms and conditions (as they may change from time to time) are hereby incorporated by reference and made a part of this Lease. Any claim, action, suit or proceeding (collectively, a "Claim") between State and Lessee that arises from or relates to the Lease shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. LESSEE, BY EXECUTION OF THIS LEASE, HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF ALL SUCH COURTS.
- 7.12 Binding on Successors: This Lease shall be binding on and shall inure to the benefit of the successors and assigns of the parties hereto, but nothing in this section shall be construed as a consent by State to any disposition or transfer of the Lease or any interest herein by Lessee except as otherwise expressly provided in this Lease.
- 7.13 Nondiscrimination: The Leasehold shall be used in a manner, and for such purposes, that assure fair and nondiscriminatory treatment of all persons without respect to race, creed, color, religion, handicap, disability, age, gender, or national origin.
- 7.14 Right To Sue More Than Once: State may sue periodically to recover damages accrued to date and no action for damages shall bar later actions for damages subsequently accruing.
- 7.15 Remedies Cumulative: The remedies contained in this Lease shall be in addition to, and shall not exclude, any other remedy available at law or in equity, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it at the same or different times of any other such remedies for the same default or breach by the other party.
- 7.16 Attorney Fees: If suit or action is instituted in connection with any controversy arising out of or in connection with this Lease, the prevailing party shall be entitled to recover all costs and disbursements incurred, including such sum as the court may adjudge reasonable as attorney fees at trial and on any appeal of the suit or action, and in any bankruptcy case or proceedings.

- 7.17 Exhibits: All Exhibits to which reference is made in this Lease are incorporated in this Lease by the respective references to them, whether or not they are actually attached. References to "this Lease" include matters incorporated by reference.
- 7.18 Compliance With Applicable Law: State's performance under this Contract is conditioned on Lessee's compliance with the provision of ORS 279.312, 279.314, 279.316, 279.320 and 279.555, which are incorporated by reference herein.
- 7.19 Late Charges and Interest: It is understood by both parties that late payments by Lessee of rent and other charges due hereunder will cause State to incur costs and other damages not otherwise addressed in this Lease, the exact amount of which will be difficult to ascertain, including costs associated with administrative processing and accounting. As recognition of the foregoing, the parties agree that, notwithstanding other remedies permitted hereunder and in addition thereto, if Lessee has not made full payment of amounts due within twenty (20) days of the date such payment is due, Lessee shall pay an additional charge equal to five percent (5%) of the amount of the late Rent or other charge. In addition, all amounts due and owing under this Lease, including late charges, shall bear interest at the lower of: (1) the highest interest rate allowable by law, or (2) twelve percent (12%) per year.
- 7.20 Survival. Termination or expiration of the Lease shall not extinguish or prejudice State's right to enforce the indemnification, access to records, governing law, venue and consent to jurisdiction provisions of this Lease.

## **SECTION 8 - INSURANCE**

- 8.1 Commercial General Liability: Lessee shall obtain at Lessee's expense, and keep in effect during the term of this Lease, comprehensive or commercial general liability insurance covering bodily injury and property damage with an insurance company acceptable to State. This insurance shall include personal injury coverage, contractual liability coverage for the indemnities provided under this Lease and products/completed operations liability. Combined single limit per occurrence shall not be less than \$1,000,000.00. Annual aggregate limit shall not be less than \$1,000,000.00.
- 8.2 Pollution Liability: Lessee shall obtain at Lessee's expense, and shall keep in effect during the term of the Lease, Pollution Liability Insurance covering Lessee's liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs incurred by Lessee, all arising out of Lessee's lease of the Leasehold. Combined single limit per occurrence shall not be less than N/A. Annual aggregate limit shall not be less than N/A.

8.3 Workers' Compensation Insurance: All employers, including Lessee, that employ subject workers who perform work under this Lease in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Lessee shall ensure that each of its sublessees (if permitted) complies with these requirements.

8.4 Revisions/Amendments/New Requirements: The amounts and types of insurance (including those specified in Section 8) and the party responsible for procuring the insurance shall be established and reviewed when circumstances warrant. The requirements may be revised or amended by State periodically at State's sole discretion after State:

- (a) consults with its insurance advisor;
- (b) consults with Lessee;
- (c) considers the commercial reasonableness of any requirements, amendments or revisions; and
- (d) considers State's need for adequate insurance protection and State's fiduciary obligations.

Within thirty (30) days notice to Lessee of State's revision or amendment of the insurance requirements, Lessee shall provide State with satisfactory evidence that Lessee has obtained new insurance coverage which conforms with the revised/amended insurance requirements. If mutually agreed in writing, Lessee may have additional time to obtain such insurance.

8.5 Named Insured Parties: The liability insurance coverages required for performance of the Lease shall include the State of Oregon, the Department of State Lands and its Departments, sections, officers and employees as additional insureds but only with respect to Lessee's activities to be performed under this Lease.

8.6 Certificate(s) of Insurance: As evidence of the insurance coverages required by this Lease, Lessee shall furnish certificate(s) of insurance to State prior to the execution of this Lease, and not less often than annually thereafter and as reasonably requested by State. The certificate(s) will specify all of the parties who are additional insured (or loss payees). Insurance coverages required under this Lease shall be obtained from acceptable insurance companies or entities reasonably acceptable to State. Lessee shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder.

8.7 "Tail" Coverage: If any of the required liability insurance is on a "claims made" basis, "tail" coverage will be required at the termination or expiration of this Lease for a duration of twenty-four (24) months, or the maximum time period reasonably available in the marketplace. Lessee shall furnish certification of "tail" coverage as described or continuous "claims made" liability coverage for twenty-four (24) months following termination or expiration of the Lease. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage,



provided its retroactive date is on or before the effective date of the Lease. If continuous "claims made" coverage is used, Lessee shall be required to keep the coverage in effect for a duration of not less than twenty-four (24) months from the termination or expiration of the Lease.

## **SECTION 9 - IMPROVEMENTS**

- 9.1 Limitation on Improvements: Lessee shall not construct or place upon the Leasehold any Improvement that exceeds fifteen thousand dollars (\$15,000) in cost or value unless Lessee shall have first obtained the prior written authorization of State or unless such Improvement is exempt under OAR 141-082-0030(4). Approval for Improvements consistent with the purposes of this Lease shall not be unreasonably withheld or delayed. All Improvements must be consistent with the authorized use(s) of this Lease as stated in Section 2.1 and in compliance with all applicable laws, regulations, and ordinances as stated in Section 5.4.1.
- 9.2 Disposition of Unauthorized Improvements or Structures: Unauthorized improvements shall, at the election of State, be removed from the Leasehold by Lessee or, if State so elects, by State at Lessee's cost and expense.
- 9.3 Removal of Authorized Improvements: Any authorized Improvement must be removed within ninety (90) days of the termination or expiration of the Lease or modification of the Lease under Section 4.1.1, unless otherwise agreed by the parties or exempt from authorization under OAR 141-082-0030(4). Lessee shall be responsible for any damage done to the Leasehold as a result of the removal of the Improvement. Any Improvement remaining on the Leasehold after the ninety (90) day period may at the option of State become the property of State, unless otherwise agreed by the parties.

## **SECTION 10 - ADDITIONAL CONDITIONS AND STIPULATIONS**

- 10.1 None.

## **SECTION 11 - ENTIRE AGREEMENT**

- 11.1 ENTIRE AGREEMENT: THIS LEASE, TOGETHER WITH THE ATTACHED EXHIBITS AND ATTACHMENTS, CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS LEASE SHALL BIND EITHER PARTY UNLESS IN WRITING. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN, AND SHALL BE VALID AND BINDING ONLY IF IT IS SIGNED BY EACH PARTY. THERE ARE NO UNDERSTANDINGS, AGREEMENTS OR REPRESENTATIONS, ORAL OR

WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS LEASE. THIS LEASE SUPERSEDES ALL PRIOR OR EXISTING LEASE OR RENTAL AGREEMENTS BETWEEN THE PARTIES WITH RESPECT TO THE LEASEHOLD DESCRIBED IN THIS LEASE.

Lessee, by the signature below of its authorized representative, hereby acknowledges that Lessee has read this lease, understands it and agrees to be bound by its terms and conditions. In addition, and without limiting the foregoing, Lessee expressly agrees to all covenants herein and binds him/herself for the payment of the Rent specified in the Lease.

**STATE:**

The State of Oregon, acting by  
and through the Oregon State  
Land Board and the  
Department of State Lands  
775 Summer ST NE, STE 100  
Salem, OR 97301-1279

Stephen J. [Signature]  
Authorized Signature

Jan 23, 2006  
Date

**LESSEE:**

Ash Grove Cement Company  
Marine Industrial/Marine Service  
11011 Cody Street  
Overland Park, KS 66210  
913-451-8900

Charles T. Wiedenhoft  
Signature/Title

(Note requirement below)

1-12-06

Date

Note: If Lessee is a corporation, partnership, limited liability company or other form of business entity, signer warrants that s/he has the authority to sign the lease on behalf of such entity by resolution of its Board of Directors or equivalent, or through delegation of authority to the signer.

STATE OF KANSAS )  
County of JOHNSON ) ss

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of January, 2006, by Charles T. Wiedenhoft (name of officer or agent of corporation), the President (title of officer or agent) of Ash Grove Cement Company (name of business entity), a Delaware (state or place of incorporation)

Corporation (corporation, general partnership, limited liability company, etc.) on behalf of said Corporation (corporation, general partnership, limited liability company, etc.).



[Signature]  
Signature  
My commission expires 2/13/06

## CERTIFICATE OF COMPLIANCE WITH OREGON TAX LAWS

I, the undersigned, hereby swear or affirm under penalty of perjury that to the best of my knowledge, I am not in violation of any Oregon Tax Laws.

For the purposes of this certificate, "Oregon Tax Laws" means those programs listed in ORS 305.380(4) which is incorporated herein by this reference. Examples include the state inheritance tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue (Lane Transit District Self-Employment Tax, Lane Transit District Employer Payroll Tax, Tri-County Metropolitan Transit District of Oregon ("Tri-Met") Employer Payroll Tax, and Tri-Met Self-Employment Tax).

Signature: Charles T. Wiedenhoft

Date: 1-12-06

Printed Name: Charles T. Wiedenhoft

Title: President

J:\AttachmentAwest\ML Waterway Leases\ML-10587 2005.doc

# EXHIBIT A

$$85 \times 20 = 1700$$

$$104 \text{ ac} = 1742$$

